

In The Matter Of:

MARC S. KIRSCHNER, et al.

v.

PHILLIP R. BENNETT, et al.

STEPHEN C. DISPENZA - Vol. 1
July 19, 2011

MERRILL CORPORATION

Legalink, Inc.

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STEPHEN C. DISPENZA - 7/19/2011

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES
LITIGATION

07-MDL-1902

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This Document Relates To:

MARC S. KIRSCHNER, as Trustee of
the Refco Private Actions Trust,

Plaintiff,
-vs- 07 CIV 8165 (JSR)

PHILLIP R. BENNETT, SANTO C. MAGGIO,
ROBERT C. TROSTEN, MAYER BROWN LLP,
MAYER BROWN INTERNATIONAL LLP, and
GRANT THORNTON LLP,

Defendants.

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GRANT THORNTON LLP,
Defendant/Third Plaintiff,

-vs-

THOMAS H. LEE PARTNERS, L.P.;
THL EQUITY ADVISORS V, LLC;
THL MANAGERS V, LLC;
THOMAS H. LEE EQUITY FUND V, L.P.
THOMAS H. LEE PARALLEL FUND V, L.P.,
THOMAS H. LEE EQUITY (CAYMAN) FUND V,
L.P., THOMAS H. LEE; DAVID V. HARKINS;
SCOTT L. JAECKEL; and SCOTT A SCHOEN,

Third-party Defendants.

-----x
July 19, 2011
9:09 a.m.

WITNESS: STEPHEN C. DISPENZA

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1	STEPHEN C. DISPENZA	1	STEPHEN C. DISPENZA
09:39:26 2	Q. Who was that?	09:42:06 2	A. Can you be more specific; me
09:39:27 3	A. Gary Weiss.	09:42:08 3	personally?
09:39:28 4	Q. Was that the CEO of Refco FX	09:42:08 4	Q. Yes.
09:39:37 5	Associates Limited?	09:42:09 5	A. Or the operation?
09:39:37 6	A. I don't recall what his title, I	09:42:10 6	Q. You.
09:39:39 7	don't recall for which entity he was the CEO.	09:42:11 7	A. My last -- I closed the door to
09:39:41 8	Q. You just knew him as the CEO?	09:42:16 8	that office in January, the first week of
09:39:43 9	A. He was the boss of Bermuda.	09:42:18 9	January 2002.
09:39:46 10	Q. So he was the head of the Bermuda	09:42:24 10	Q. Is that when you returned to New
09:39:48 11	operations?	09:42:26 11	York?
09:39:49 12	A. That's correct.	09:42:31 12	A. I returned earlier to New York,
09:39:49 13	Q. Did at some point you consider	09:42:34 13	but because our offices were operated in New
09:39:58 14	yourself to be the head of the FX trading	09:42:37 14	York out of the World Financial Center and
09:40:03 15	business in Bermuda?	09:42:40 15	following the bombing of the Trade Center, we
09:40:06 16	A. I considered myself to be the	09:42:43 16	couldn't move everything back to New York when
09:40:08 17	most senior person responsible for the FX	09:42:44 17	I wanted to. So, I left some of it in Bermuda
09:40:12 18	business in Bermuda.	09:42:49 18	to maintain the operation along with our
09:40:13 19	Q. During what time frame?	09:42:51 19	operations in Chicago.
09:40:27 20	A. I don't recall the date, but it	09:42:54 20	I don't know if that answers your
09:40:29 21	was -- it would be following the departure of	09:42:55 21	question. It is a gray area of the exact date
09:40:34 22	who was at the time the head of Bermuda. I	09:42:57 22	back because of that event.
09:40:39 23	don't recall the year he left.	09:42:59 23	Q. Understood. Back in 2001, can
09:40:40 24	Q. Who was that?	09:43:06 24	you describe for me all of the offices that
09:40:41 25	A. Barry Fetner.	09:43:10 25	Refco had where it conducted FX trading?
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1	STEPHEN C. DISPENZA	1	STEPHEN C. DISPENZA
09:40:46 2	Q. So after Mr. Fetner left you were	09:43:20 2	A. Conducted FX trading, could you
09:40:48 3	the senior most person responsible for the FX	09:43:23 3	be more specific where, what do you mean
09:40:52 4	trading business in Bermuda?	09:43:25 4	conducted FX trading?
09:40:55 5	A. In Bermuda, yes.	09:43:27 5	Q. Where it had employees that
09:41:03 6	Q. How large was the operation in	09:43:28 6	facilitated it.
09:41:05 7	Bermuda, in terms of number of employees?	09:43:30 7	A. Okay. In the United States that
09:41:11 8	A. When? Could you be more specific	09:43:32 8	would be New York and Chicago. In Canada it
09:41:13 9	about what years?	09:43:37 9	would be Montreal, Toronto. In Europe it would
09:41:14 10	Q. Well, why don't you explain to me	09:43:43 10	be London, Geneva.
09:41:17 11	how the office grew.	09:43:51 11	In Bermuda in 2001 until we
09:41:19 12	A. The office grew and the office	09:43:56 12	departed. In Asia it would be Hong Kong,
09:41:21 13	shrank during the course of the eight years I	09:44:02 13	Singapore, Tokyo. I think I've got them. I
09:41:22 14	was there. I would say we were as small as 10	09:44:11 14	think that's all of them.
09:41:24 15	and as large as 30.	09:44:12 15	Q. Refco had employees in all those
09:41:28 16	Q. When you left in 2001 how large	09:44:14 16	locations?
09:41:30 17	was the office?	09:44:14 17	A. Yes.
09:41:31 18	A. Twelve.	09:44:15 18	Q. Were those employees employees of
09:41:37 19	Q. What circumstances led to your	09:44:19 19	Refco Capital Markets, which we'll refer to as
09:41:40 20	departing Bermuda in 2001?	09:44:22 20	RCM in this deposition?
09:41:43 21	A. A repatriate -- the firm decided	09:44:26 21	A. I can't speak to whether they
09:41:47 22	to repatriate the operations to the United	09:44:28 22	were employees of Refco Capital Markets because
09:41:59 23	States.	09:44:32 23	even the people that worked for Capital Markets
09:41:59 24	Q. When exactly did you leave	09:44:35 24	weren't necessarily employed by Capital
09:42:01 25	Bermuda?	09:44:38 25	Markets. So I don't know the answer to that

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1	STEPHEN C. DISPENZA	1	STEPHEN C. DISPENZA
15:21:49 2	Q. Did it house some of them?	15:33:30 2	customers, even if they were Capital Markets
15:21:53 3	A. I can't answer that with	15:33:33 3	customers included the care of Refco Securities
15:21:55 4	confidence.	15:33:37 4	address of 200 Liberty Street in New York, the
15:22:01 5	Q. We're done with that. Thank you.	15:33:40 5	One World Financial Center so that somebody
15:22:03 6	MR. PUTZEL: Before we --	15:33:43 6	could address the correspondence because had it
15:22:14 7	MR. KARLAN: Did I make a mistake?	15:33:45 7	been sent to the Bermuda address, it would just
15:22:20 8	I assume you are not writing him a note.	15:33:48 8	end up on a lawyer's desk for which they
15:22:23 9	MR. PUTZEL: I am not writing him a	15:33:51 9	wouldn't know what to do with it.
15:22:25 10	note. If he needs to correct testimony,	15:33:52 10	So, I recall us including the
15:22:27 11	I'd rather he do it now.	15:33:55 11	care of Refco Securities, World Financial
15:22:29 12	MR. KARLAN: I agree. Do you want	15:33:59 12	Center address on Capital Markets
15:22:31 13	to take a break and talk to him?	15:34:00 13	correspondence.
15:22:33 14	MR. PUTZEL: I think it might make	15:34:19 14	MR. FIRSENBAUM: Off the record.
15:22:34 15	sense. Let's go off the record if we may.	15:34:21 15	VIDEOGRAPHER: Going off the record
15:22:36 16	VIDEOGRAPHER: Going off the record	15:34:23 16	at 2:33.
15:22:37 17	3:22.	15:35:33 17	(Recess taken.)
15:23:27 18	(Recess taken.)	15:35:34 18	VIDEOGRAPHER: Returning to the
15:31:31 19	VIDEOGRAPHER: Returning to the	15:35:45 19	record at 3:35.
15:32:07 20	record at 3:31.	15:35:54 20	EXAMINATION CONDUCTED BY MR. KARLAN:
15:32:10 21	MR. PUTZEL: Mr. Karlan, Mr.	15:35:56 21	Q. So 3171 you're able to say is a
15:32:11 22	Dispenza would like to clarify a previous	15:35:59 22	statement for an FX account?
15:32:14 23	or maybe even correct previous testimony.	15:36:00 23	A. Yes.
15:32:17 24	EXAMINATION CONDUCTED BY MR. KARLAN:	15:36:03 24	Q. And 1419 you're able to say is a
15:32:19 25	Q. Have at it. Tell us which	15:36:05 25	statement for a securities account? For
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1	STEPHEN C. DISPENZA	1	STEPHEN C. DISPENZA
15:32:21 2	numbers we're looking at.	15:36:13 2	something other than --
15:32:23 3	A. Kraker 1419.	15:36:14 3	A. I am saying to say it is not an
15:32:32 4	Q. Okay.	15:36:15 4	FX statement.
15:32:35 5	MR. RAND: As well as what was	15:36:16 5	Q. But your ability to distinguish
15:32:37 6	marked today as 3171.	15:36:20 6	between the two does not derive, am I right,
15:32:41 7	A. So, just to clarify, it's easy	15:36:23 7	from the fact that 1419 says care of Refco
15:32:44 8	for me to identify a securities account versus	15:36:28 8	Securities LLC, because they both say that; am
15:32:47 9	an FX account based on the format the document	15:36:31 9	I right?
15:32:50 10	is generated in, because I know what systems	15:36:31 10	A. I would agree with that.
15:32:53 11	were generating the FX statements versus	15:36:33 11	Q. Okay. Thank you, sir.
15:32:57 12	securities statements.	15:36:38 12	So, is it just the look, the
15:32:58 13	So Kraker Exhibit 1419 is in the	15:36:42 13	visual look of each of the two that tells you
15:33:02 14	securities format, generated by a securities	15:36:46 14	which is which?
15:33:05 15	system.	15:36:46 15	A. In this case, yes, but the answer
15:33:06 16	Q. Okay.	15:36:48 16	to that question is no. Because if there was
15:33:06 17	A. And the other document, 3171 is a	15:36:50 17	trading in this account 1419 --
15:33:10 18	foreign exchange document generated by the	15:36:55 18	Q. Yes, sir.
15:33:12 19	foreign exchange back office system.	15:36:55 19	A. -- that represented products
15:33:16 20	Now the confusion about the	15:36:57 20	other than foreign exchange --
15:33:18 21	address is the physical mailing address of	15:36:59 21	Q. Yes, sir.
15:33:21 22	Refco Capital Markets I recall continued to be	15:36:59 22	A. -- I would know it wouldn't be a
15:33:25 23	Bermuda, even though we no longer had a	15:37:01 23	foreign exchange account because you couldn't
15:33:28 24	physical presence there.	15:37:03 24	trade anything but FX and of course gold and
15:33:29 25	So any correspondence with	15:37:06 25	silver, platinum and palladium in an FX

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